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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,657	02/19/2002	Yoshiaki Yokoo	159-71	2579

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EXAMINER	
BECKER, DREW E	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/076,657	YOKOO ET AL.	
	Examiner	Art Unit	
	Drew E. Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 25 May 2005.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1,4-11 and 14 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1,4-11 and 14 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Request for Continued Examination

1. The request filed on May 25, 2005 for an RCE based on parent Application No. 10/076,657 is acceptable and an RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification discloses that to produce a turbidity above 2000 NTU, a centrifugal effect of 11,000(xG) was the upper limit (page 6, line 2).

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 7 recites "wherein addition of the processed mango juice... imparts flavor to the processed mango juice". It is not clear how the mango juice can affect the flavor itself.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 and 4-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen et al [Pat. No. 5,756,141].

Chen et al teach a processed mango juice having substantially no pulp (column 7, lines 33-60; claim 3), mango puree (column 5, line 45), a beverage made from mango juice and water (column 5, line 26), inherently preventing sedimentation due to the lack of pulp, providing lowered viscosity and excellent flavor (column 4, lines 58-65), the use of 5-35% aloe vera (column 13, line 20), alcoholic drink (column 11, line 67), and the juice inherently having a turbidity above 2000 NTU. Phrases such as "by centrifugal separation" are merely preferred methods of making the claimed product. Product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the

product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al as applied above, in view of XP-002201947.

Chen et al teach the above mentioned components. Chen et al do not recite fruit wine. XP-002201947 teaches a fruit wine made from mango juice (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the fruit wine of XP-002201947 into the invention of Chen et al since both are directed to mango juice beverages, since Chen et al already included alcoholic drinks (column 11, line 67), and since mango wine was commonly known as shown by XP-002201947.

11. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al as applied above, in view of DE 20102826U1.

Chen et al teach the above mentioned components. Chen et al do not recite liqueur. DE 20102826U1 teaches a liqueur made from mango juice (abstract). It would have been

obvious to one of ordinary skill in the art to incorporate the liqueur of DE 20102826U1 into the invention of Chen et al since both are directed to mango juice beverages, since Chen et al already included alcoholic drinks (column 11, line 67), and since mango liqueur was commonly known as shown by DE 20102826U1.

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al as applied above, in view of Wu et al [Pat. No. 5,468,508].

Chen et al teach the above mentioned components. Chen et al do not recite a transparent container. Wu et al teach a mango juice in a glass bottle (column 9, line 28; column 4, line 64). It would have been obvious to one of ordinary skill in the art to incorporate the glass bottle of Wu et al into the invention of Chen et al since both are directed to mango juice beverages, since Chen et al already included packaging (column 13, line 58), and since mango juice was commonly bottled in glass packages as shown by Wu et al.

Response to Arguments

13. Applicant's arguments filed May 25, 2005 have been fully considered but they are not persuasive.

Applicant argues that Chen et al do not disclose a turbidity above 2000 NTU. However, this was an inherent property of depulped mango juice as explained in applicants response (page 4, 3rd paragraph). Regardless of how the mango juice is depulped, it would possess the same properties. Furthermore, Chen et al describe the fruit juice having the natural skin color of the fruit being processed (column 8, line 5).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Drew E Becker
Primary Examiner
Art Unit 1761